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Docket No. 95-004M
PATENT APPLICATION

I certify that on the date specified below this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, and a fax copy to (703) 872-6906 Attn: Office of Petitions, Brian Hearn.

Date

9/2/04

Conrad O. Gardner

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Conrad O. Gardner Group Art Unit: 3618
Application No.: 08/896,514 Examiner: A. Lerner
Filing Date: June 23, 1997 Docket No.: 95-004M
Date:

For: Extended Range Motor Vehicle Having Ambient Pollution Processing

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 35 U.S.C. 182 REQUESTING
WITHDRAWAL OF THE TERMINAL DISCLAIMER
FILED JULY 3, 2000

Sir:

Please withdraw the Terminal Disclaimer dated June 28, 2000, which was included with applicant's amendment of the same date.

REMARKS

I. The U.S.P.T.O. on November 2, 1998 (Appendix B in applicant's SUBSTITUTE SECOND SUPPLEMENTAL BRIEF ON APPEAL dated December 3, 2003) stated, "A claim defining the cruise mode operation and the hybrid vehicle together with a terminal disclaimer would be allowable."

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No such defining claim by applicant in exchange for the terminal disclaimer stands allowed.

Further, claims 34, 50, 54, 57, and 60 all include further definitions including the above definition.

Since the above agreed-upon definition and the many claims including the agreed-upon definition were the consideration for the terminal disclaimer, the consideration has failed in support of the terminal disclaimer.

While the preceding legal justification for withdrawal, nullification, or cancellation of the terminal disclaimer is shown, the almost 7-year prosecution time of the application, including loss and reconstruction of the application file, it is believed further supports the equities in the above contractual interpretation.

II. The statute does not provide for conditional disclaimers and accordingly, a proposed disclaimer which is made contingent on the allowance of certain claims cannot be accepted" (MPEP 1400-94 under Requirements of Terminal Disclaimers, second column, second paragraph).

Nullification of the Terminal Disclaimer filed July 3, 2000 is believed appropriate under the circumstances and consistent with the orderly administration of the examination process since applicant was advised by the administrative officer of the Board of Appeals that his request for an Oral Hearing filed May 3, 2004 cannot be heard for several months, viz not until November, thereby enabling consideration of this Petition prior thereto, this case having been granted special status dated November 29, 2001 during the prosecution.

There cannot be uncertainties in agreements upon which terminal disclaimers are filed causing loss of patent term(s).

Enclosed is the required fee of \$130.00.

Respectfully submitted,



Conrad G. Gardner

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